IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7465 OF 2004

Shri Vishwanath Madhav Dhapre .. Petitioner.
Vs.
Smt.Sushila Vishnu Koli & Ors. .. Respondents.

Ms.Nayana Thatte for the petitioner.
Mr.Machhindra Patil for respondent nos.1 to 5.

CORAM : D.B.BHOSALE, J.

DATED : 14TH SEPTEMBER, 2006

P.C.:

. This writ petition under Article 227 of the Constitution of India is directed against the order dated 12.4.2004 passed by the trial Court rejecting the application at Exhibit-123 filed by the respondent-defendant no.8 for setting aside "No W.S." order dated 21.7.1993.

2. The petitioner-plaintiff has filed a suit being regular civil suit no.342 of 1992 for declaration that he is in possession of the open land in the final plot no.450 and in the alternative prayed for possession thereof after removing encroachment thereupon, if it is found that he is not in possession.

3. Admittedly, the suit summons were served on

all the defendants in 1992 itself. Respondent no.8 - Shankar Bapu Gaikwad, who is defendant no.8 in the suit, had failed and neglected to file written statement and, therefore, the trial Court passed "No W.S." order on 21.7.1993. It appears, thereafter the suit proceeded further, step by step, and it reached the stage of final arguments. At this stage and after about eleven years, defendant no.8 filed an application on 5.3.2004 at Exhibit-123 for setting aside "No W.S." order dated 21.7.1993. The application, was opposed by the plaintiff by filing reply. The application was, however, allowed by the impugned order dated 12.4.2004.

4. I perused the application at Exhibit-123, the reply of the plaintiff as also the other material placed before me. The application dated 5.3.2004 filed by the plaintiff is a cryptic application. It simply states that defendant no.8 was unwell and hence he could not file "W.S." as also the application for setting aside "No W.S." order earlier. He does not give any particulars whatsoever about his illness or explain the delay of almost ten years in filing this application for setting aside "No W.S." order. The petitioner-plaintiff has denied the contents of the application by filing reply and has stated that in any case the delay of more than ten years cannot be

condoned for want of proper explanation or sufficient cause for such delay.

5. It is true that the Legislature has conferred the powers to condone delay by enacting section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of the matters on merits. The expression "sufficient cause" employed is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. However, this well settled principle in law cannot be employed or taken recourse to in the present case. In the present case, defendant no.8 has not shown any cause or sufficient cause for seeking condonation of more than ten years delay in filing this application. A bare perusal of the application would show that it was absolutely casual and defendant no.8 was not at all serious in seeking condondation of delay of about eleven years. It is true that what counts is not the length of the delay but the sufficiency of the cause. In the present case, if one look at the delay of about eleven years and the conduct of defendant no.8 right from the inception, it would not be justifiable to give him benefit of the settled principles in law. Defendant no.8 was grossly negligent in defending the proceedings before the court. He knew the proceedings

against him were pending before the Court and he cannot, therefore, be in any manner lethargic, thinking that the court would show indulgence at whatever stage he approaches the court with an application for setting aside "No W.S." order. The said order was passed almost 11 years ago. He took the court for granted and unfortunately the trial court, in his absence, allowed the application - Exhibit-123 without considering the reply filed by the petitioner opposing the said application, resulting into a prejudice being caused to the plaintiff, who has been waiting for disposal of the suit for more than 14 years. In the circumstances I am satisfied that defendant no.8 has miserably failed to show cause or sufficient cause for condonation of 11 years delay. In the result this writ petition is allowed. The order impugned is set aside. The trial Court to proceed further and dispose of the suit expeditiously.

(D.B.Bhosale, J.)